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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,808	12/15/2000	Joseph C. Salamone	P02389	2389

7590

04/08/2003

Robert B. Furr, Jr.
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EXAMINER

THORNTON, KRISANNE MARIE

ART UNIT

PAPER NUMBER

1744

15

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/738,808

Applicant(s)

SALAMONE ET AL.

Examiner

Krisanne M. Thornton

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-19 and 23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-19 and 23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3, 5-6, 9-11, 14-17 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellis et al., '327.

Ellis et al., '327 teach a method of treating contact lenses with a polyethylene oxide (PEO) which comprises PEO chains attached to a core, such as cellulose (column 2, lines 15-29). A cationic cellulose polymer is also present in solution in Ellis preferred embodiment (column 2, line 32). The two components complex with one another and strongly absorb to the lens surface (column 4, line 47). Ellis teaches the use of additives such as additional PEO-containing materials, additional cationic cellulose, and polyvinyl pyrrolidone (column 5, lines 50-65). The hard, rigid, and soft contact lenses, such as those made of silicone hydrogel, treated by the method of the invention have the ability to repel protein deposits (column 6, lines 1-25). While Ellis does not specifically teach that the lens of his method will inhibit the ability of the lens to sorb cationic antimicrobials, it is the Examiner's position that the treatment of similar surfaces with similar materials would inherently yield the same result.

Claims 1-7, 9-16, 19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellis '261.

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Ellis et al., '261 teach a contact lens solution for wetting, soaking, and lubricating contact lenses, particularly those carrying an ionic charge. The solution may contain cationic polymer that interacts with an oppositely charged surface of a contact lens to provide long lasting lens wettability and a cushioning, lubricating effect (abstract). Additionally, the complex formed on the lens surface increases the hydrophilicity of the lens and inhibits the adhesion of proteins (paragraph spanning columns 1 and 2). Ellis teach a variety of methods of providing an ionic complex to the surface of a contact lens. Treatment of an anionic lens with a lens solution containing cationic cellulose yields the complex taught by Ellis (Examples V and X). While Ellis '216 does not specifically teach that the lens of his method will inhibit the ability of the lens to sorb cationic antimicrobials, it is the Examiner's position that the treatment of similar surfaces with similar materials would inherently yield the same results.

With respect to claims 2, 7, 9-14, Ellis teaches numerous bonding techniques inclusive of those claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Ellis '327 or '261.

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Both references teach the treatment of contact lens substantially as claimed, with '261 referring to lens that can be worn for long periods of time and '327 referring to a variety of contact lens types, it would have been well within the purview of one of ordinary skill in the art that the treatments of Ellis '261 and '327 would intrinsically apply effectively to all known types of contact lens including extended wear.

Response to Arguments

Applicant argues that neither Ellis '261 nor '327 teach a method for inhibiting the ability of a biomaterial to sorb cationic antimicrobials, however, the Examiner would maintain that prior art of record clearly teaches applying the same treatment to the same material and would inherently achieve the same result as claimed by Applicant. It is noted that Applicant failed to provide any evidence of such inhibiting as a surprising result and therefor the rejection is deemed proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne M. Thornton whose telephone number is 703-308-3914. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


KRISANNE THORNTON
PRIMARY EXAMINER

April 7, 2003